SUPREME COURT, U. S.
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IN THE

Supreme Court of the United States

October Term, 1966

No. 1040

QUINAULT TRIBE OF INDIANS,
Petitioner,

v.

A. M. GALLAGHER, *et al.*,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF THE MAKAH INDIAN TRIBE AS AMICUS CURIAE IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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AUTHORITY OF AMICUS TO FILE BRIEF

The Makah Indian Tribe files this brief as *Amicus Curiae* pursuant to Supreme Court Rule 42, a letter of consent of Jane Dowdle Smith, Assistant Attorney General of the State of Washington, dated December 12,

1966, on behalf of the respondents, and a letter of consent of Jerry C. Straus of Wilkinson, Cragun & Barker, dated January 25, 1967, on behalf of petitioner. Both letters of consent are on file herein.

INTEREST OF THE AMICUS CURIAE

The Makah Indian Tribe comprises approximately 700 enrolled Makah Indians who reside in the Makah Indian Reservation in the northwest corner of the Olympic Peninsula in the State of Washington. The interest of the Tribe, as *Amicus Curiae,* is to emphasize the importance of the instant case by apprising this court of the serious breakdown of law and order on the Makah Indian Reservation directly consequent to the attempted assumption of partial jurisdiction by the State of Washington over Washington Indians and Indian reservations.

The Makah Indian Tribe is a tribe, recognized by the Bureau of Indian Affairs and organized under the Indian Reorganization Act, 48 Stat. 984, 25 U.S.C., Sec. 461, *et seq.* The Constitution and By-Laws of the Makah Indian Tribe of the Makah Indian Reservation, Washington, ratified and approved pursuant to 25 U.S.C. Sec. 476, establishes as the governing body of the Tribe a five-member tribal council, empowered

> "(i) To promulgate and enforce ordinances, which shall be subject to review by the Secretary of the Interior, governing the conduct of members of the Makah Indian Tribe, and providing for the maintenance of law and order, and the administration of justice by establishing a reservation Indian court, and defining its duties, powers, and limitations."

Consonant with its obligation and authority under the tribal constitution, the Makah Tribal Council enacted a

law and order code and has maintained the Makah Tribal Court for its enforcement since 1938. From 1938 until 1963, the maintenance of law and order on the Makah Indian Reservation proceeded in a normal and satisfactory manner, enforced for most of that period and at present by Tribal policemen who are employees of the Bureau of Indian Affairs. However, in 1963 the Tribe's tranquil exercise of self-government was shattered when the Legislature of the State of Washington—without the consent of the people of the State or the consent of the Tribe—enacted Chapter 36, Laws of 1963 (now codified as R.C.W. 37.12.010, *et seq.*), providing for partial assumption by the State of jurisdiction over Washington Indians when on trust or restricted reservation lands, limited to the following areas:

(1) Compulsory school attendance;

(2) Public assistance;

(3) Domestic relations;

(4) Mental illness;

(5) Juvenile delinquency;

(6) Adoption proceedings;

(7) Dependent children; and

(8) Operation of motor vehicles upon the public streets, alleys, roads and highways.

This enactment, upheld by the Court of Appeals for the Ninth Circuit in the instant case, has spawned a plethora of complex jurisdictional problems resulting in the serious impairment to the maintenance of law and order on the Reservation that the Makah Indian Tribe now faces.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

1. The attempted assumption of partial jurisdiction over the Makah Indian Tribe and its members by the State of Washington has rendered the Makah Indian Reservation a virtual jurisdictional checkerboard.

Within the boundaries of the Makah Indian Reservation are seven parcels of land held in fee simple by non-Indians, one parcel of land held in fee simple by the Makah Indian Tribe, a military reservation of the United States Guard, a United States Air Force station and a Job Corps Camp on leased tribal trust land, and numerous parcels of tribal trust land leased to non-Indians, in addition to tribal trust lands and allotments. Since under Chapter 36, state jurisdiction is total on non-trust land, but limited on trust land, it becomes readily apparent that determination of whether a Makah Indian performing any given act comes within the jurisdiction of the State of Washington presents a complex problem.

First, it must be decided whether the Indian acted on tribal or allotted trust land. If not, state jurisdiction obtains, but if so, it must then be decided whether the Indian acted within one of the eight enumerated areas of state jurisdiction. The difficulty of the latter task is best illustrated by the problems arising out of the last of those areas, "operation of motor vehicles upon the public streets, alleys, roads and highways."

The Makah Indian Tribe contends that the State could not possibly have jurisdiction over operation of motor vehicles on the Reservation since no *state* public highway exists on the Reservation. However, deputy sheriffs

of Clallam County have arrested two enrolled Makah Indians for alleged illegal operation of motor vehicles on *tribal roads* on the Reservation.

In the first case, *State v. Mahone,* Clallam County cause number 2763, the Makah Indian was convicted in a state justice court and was pursuing an appeal in the superior court at the time of his death. In the second case, *State v. Coleman,* Clallam County cause number 2831, the Makah Indian was convicted in a state justice court and appealed to the Superior Court for Clallam County which dismissed the charges on the grounds that the State's attempted assumption of jurisdiction was invalid, and that no state public highway existed on the Reservation. The State appealed to the Washington Supreme Court but later dismissed its own appeal.

As a result, the Tribe then filed *Makah Indian Tribe v. State of Washington,* Thurston County cause number 37537, seeking a declaratory judgment to the effect that the State of Washington has not validly assumed jurisdiction over the Tribe and that, even granting that the State's jurisdiction is valid, the State may not govern operation of motor vehicles on the Reservation since no state public highways exist on the Reservation. The Superior Court for Thurston County ruled against the Tribe on both points and the case is now on appeal to the Washington Supreme Court as docket number 39398.

Regardless of the outcome of the Tribe's declaratory judgment action, it is clear that a law enforcement officer could not possibly be expected to enforce State laws on the Reservation without the use of a tract book, and in some instances, a professional survey, to aid him in determining the applicability of State jurisdiction.

2. The attempted assumption of partial jurisdiction over the Makah Indian Tribe and its members by the State of Washington has created an intolerable problem of jurisdictional definition.

Implicit in the State's attempted assumption of limited jurisdiction is the conclusion that tribal jurisdiction on tribal or allotted trust lands continue in all areas other than the eight enumerated in the statute. And yet the mere fact of the limitation has so blurred the lines of jurisdiction between the Tribe and the State as to make impossible the effective functioning of either government.

A case in point is "domestic relations," (R.C.W. 37.12.-010 (3)). Does the State's assumption of jurisdiction in this area impose state community property laws on the Reservation? And if a Makah wife is married to a non-Makah husband, is their property on the Reservation therefore subject to state tax? The Superior Court for Clallam County apparently answered both these questions affirmatively in *Makah Indian Tribe v. Clallam County*, Clallam County cause number 16592.

The case arose out of an attempt by Clallam County to tax real and personal property acquired and used by an enrolled Makah Indian wife and her non-Makah husband solely on tribal trust land on the Reservation. By federal law and the tribal constitution, the Tribe has the power to exclude non-Makahs from the Reservation, to prescribe conditions upon which they shall be permitted to reside on the Reservation, and to regulate the use and disposition of property upon the Reservation. By tribal custom, a non-Makah spouse may reside upon the Reservation only if he agrees that such property as the property in question is the sole property of the Makah spouse.

Despite federal law and tribal custom, the superior court ruled that all the property of the husband and wife is community property subject to state tax. The Tribe has appealed the case to the Washington Supreme Court as docket number 39013.

This example could be multiplied by many others to demonstrate the effect of the refusal of the State of Washington to assume the total jurisdiction contemplated by Public Law 280. Even matters of traditional tribal jurisdiction not in any of the eight enumerated areas of state jurisdiction may lie within their penumbra, but the Tribe cannot know with any certainty whether it does have jurisdiction in such a particular case. It seems clear to us that this is precisely the evil Congress sought to cure by Public Law 280.

3. The attempted assumption of partial jurisdiction over the Makah Indian Tribe and its members by the State of Washington has resulted in an hiatus in law enforcement on the Makah Indian Reservation.

The Makah Tribal Council and members of the Tribe are much alarmed at serious lapses of law enforcement on the Reservation which have occurred since the passage of Chapter 36, Laws of 1963 (now codified as R.C.W 37.12.010, *et seq.*).

Subsequent to the enactment of Chapter 36, the Attorney General of the State of Washington ruled that state jurisdiction was exclusive and that the Tribe is foreclosed from exercising any further jurisdiction in the eight areas enumerated in the statute. Thereupon the Bureau of Indian Affairs instructed the tribal policemen, who are

Bureau employees, not to enforce tribal ordinances relating to the eight enumerated areas. Simultaneously, Clallam County officials admitted that the County lacked sufficient funds to provide law enforcement on the Reservation. The result was a period during which no traffic regulations, tribal or state, were enforced on the Reservation, and a number of serious accidents resulted.

Although opposed to state regulation of operation of motor vehicles on the Reservation, the Makah Tribal Council is concerned that lives and property be protected. At present both federal and state authorities are reluctant to maintain needed law enforcement on the Reservation and an intolerable situation continues.

4. The failure of the attempted assumption of partial jurisdiction over the Makah Indian Tribe and its members by the State of Washington demonstrates the wisdom of Congress in requiring that such assumption of jurisdiction be made only upon the consent of the people of the State and be total in nature.

In the act enabling the State of Washington, 25 Stat. 676 (1889), Congress required a constitutional disclaimer of jurisdiction over Indians and Indian lands, irrevocable without the consent of the United States and the "people" of the State. In 1953, noting the constitutional disclaimer, Congress, in enacting Public Law 280 (67 Stat. 588, 18 U.S.C., Sec. 1162; 28 U.S.C., Sec. 1360), provided that the State could assume jurisdiction over Indians and Indian reservations upon amendment of its constitution—a method obviously designed to require submission of the matter to a vote of the people of the State. Congress further required that the assumption of

jurisdiction be "to the same extent" as jurisdiction exercised elsewhere within the State and that criminal law and civil laws of general application have the "same force and effect" within Indian reservations as elsewhere in the State.

However, the Legislature of the State of Washington chose to ignore the clear mandate of Congress in each regard in enacting Chapter 36. As outlined in the foregoing arguments, the result is a jurisdiction which Clallam County is not ready to assume over the Makah Indian Tribe and Reservation. The County's reluctance to obey the enactments of the state legislature indicates that if the State's assumption of jurisdiction were submitted to a vote of the people it would probably fail.

A second result of the legislature's rash enactment is a jurisdiction impossible of precise definition and thus wholly inadequate as a foundation for responsible law enforcement on the Makah Reservation.

CONCLUSION

The invalid enactment of Chapter 37.12 of the Revised Code of Washington and its inherent jurisdictional uncertainties make it imperative that this court issue a Writ of Certiorari to review the order of the United States Court of Appeals for the Ninth Circuit entered in the instant case on November 10, 1966.

Respectfully submitted,

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SUPREME COURT, U. S.

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Petitioners,

v.

A. M. GALLAGHER, individually and as Sheriff of Grays Harbor County in the State of Washington; JOHN J. O'CONNELL, individually and as Attorney General of the State of Washington; ALBERT D. ROSELLINI, individually and as Governor of the State of Washington,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH DISTRICT

MEMORANDUM FOR THE CONFEDERATED BANDS AND TRIBES OF THE YAKIMA INDIAN NATION AS AMICUS CURIAE

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MEMORANDUM FOR THE CONFEDERATED BANDS AND TRIBES OF THE YAKIMA INDIAN NATION AS AMICUS CURIAE

This memorandum is submitted with the consent of each party, and pursuant to Rule 42, by The Confederated Bands & Tribes of the Yakima Indian Nation. Letters of consent are on file with the Clerk.

INTEREST OF AMICUS CURIAE

The Yakima Indians, which now compose The Confederated Bands & Tribes of the Yakima Indian Nation, like the Quinault Indians, have lived in the State of Washington since time immemorial. The Confederated Bands & Tribes of the Yakima Indian Nation presently has 5,506 enrolled members. In 1855 under the Treaty of Walla Walla[1] they ceded a large portion of their lands, reserving a certain small portion for "their exclusive use" and upon which "no white man" was to be permitted to reside without the permission of the Tribe.[2] The Yakimas differ from the Quinaults only in that they have never indicated through any member, body or official group by word, act or deed that they wished the State of Washington to assume jurisdiction over Indians on the Yakima Indian Reservation. The exercise of this reserved jurisdiction by The Yakima Indian Nation had been both traditional and extensive prior to the enactment of Chapter 36, Laws of 1963, State of Washington. The enactment of said Chapter 36 by the Washington State Legislature was opposed by the Yakima Indians, and they have a continuing real and sincere interest, and will be affected by the outcome of this challenge to the validity of said statute.

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[1]/ 12 Stat. 941 (1859)
[2]/ Id.

ARGUMENT

The decision below holds that the State of Washington, acting through its Legislature and Chief Executive, can assume jurisdiction in Indian country and can in the process pick and choose in what areas this jurisdiction shall be imposed, all while flaunting the mandatory requirements of the Federal Statute, Public Law 280, that the State Constitution be amended, ignoring the negating provisions in the enabling legislation concerning piecemeal jurisdiction, and without seeking any consent of either the Indian or the non-Indian citizens of the State of Washington.

This decision is of broad consequence, involving as it does the exercise of adequate law and order in substantial areas of this State, and affecting almost every governmental body operating therein, be it Indian, state, local or federal. Indians now lack the protection of adequate law enforcement. Basically local governments in the State of Washington are charged with the duty and cost of law enforcement. A substantial portion of the funds used for local law enforcement come from revenues derived from ad valorem real estate and personal property taxes from which Indian lands and the personal property thereon are exempt. To believe that a local government will accept its duty and provide adequate law and order in areas where tax money to support this duty is not forthcoming, challenges the credulity of any objective observer. The fear of the

Yakima Indians that they would not be provided with adequate law and order is now a reality. Within most minority groups where internal law and order are inadequate the people that suffer most from the inadequacy are other members of that same minority group. The present situation under Chapter 36 on Indian reservations establishes that the Indian people in the State of Washington are no exception to this general rule.

We would accept the statement and argument of the Quinault Indians in their Petition for Writ of Certiorari. We further believe that to allow the State to ignore the requirements of its State Constitution as to amendments thereof and flaunt the requirements of Public Law 280, the enabling legislation, requiring Constitutional amendments and proscribing piecemeal jurisdiction, is to indicate to the Indian people a total disregard for their traditional sovereignty established by treaty, custom and usage. We also point out that the non-Indian people in this area who have had this law enforcement duty placed upon them have not been accorded the privilege and right of expressing their views regarding this matter in the traditional and Constitutional manner. We find that the people who are really involved in this, both the Indians who have had their rights taken away from them without consent and the non-Indians who have had the duty of law enforcement on the reservation forced upon them without

consent, have not been involved in the decision making process. Indian country, in the main, is located in sparsely populated areas, and the Legislature in its apportionment, with a larger vote in the heavier populated areas, does not represent directly the interest of the people, and the local law enforcement agencies of the State of Washington, actually involved.

The court below, in holding that since the law provides that the Indians can petition for the State to assume full jurisdiction, the State has in no way violated any statutory requirement in assuming only partial jurisdiction, begs the question. The Yakima Indians feel that partial jurisdiction is better than total State jurisdiction, but this is clearly not the intention of the Congress that passed the enabling legislation in Public Law 280. This court pointed out in *Seymour v. Superintendent*, 368 U. S. 351, 357, 82 Sup. Ct. 424 (1962) that the type of checkerboard jurisdiction established by Chapter 36 has been clearly legislated against by Congress.

> "Such an impractical pattern of checkerboard jurisdiction was voided by the plain language of Sec. 1151, and we see no justification for adopting an unwarranted construction of that language where the results would be merely to re-create confusion Congress specifically sought to avoid."

SUMMARY OF THE ARGUMENT

From the foregoing, four things are apparent:

First, in assuming jurisdiction of Indian reservations the State of Washington failed to comply with

the mandatory language of Public Law 280 requiring amendment of State Constitutions.

Second, the Washington statute effectively amends the Washington Constitution without benefit of compliance with the Constitution's own requirements for amendment.

Third, the Washington legislative process has failed to allow voice to the people, both Indian and non-Indian, who are most affected by the law.

Fourth, Congress' grant of jurisdiction in Public Law 280 did not permit States to assume jurisdiction over Indian reservations in a piecemeal fashion, such as is attempted in Chapter 36.

CONCLUSIONS

For the foregoing reasons, we urge that the Petition for a Writ of Certiorari be granted, and that judgment of the United States Circuit Court of Appeals for the Ninth Circuit be reversed.

Respectfully submitted,

JAMES B. HOVIS
Counsel for the Confederated Bands & Tribes of the Yakima Indian Nation.

January, 1967.

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Respondents, A. M. Gallagher, Sheriff of Grays Harbor County, State of Washington; and John J. O'Connell, Attorney General of the State of Washington; and Albert D. Rosellini, Governor of the State of Washington, hereby waive any objections to the issuance of a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in the above entitled case November 10, 1966.

OPINIONS

The opinion of the District Court for Western Washington of December 7, 1965 delivered orally from the bench.

The first opinion of the Ninth Circuit Court of Appeals rendered September 19, 1966 affirming the District Court on jurisdictional grounds (368 F.2d 648).

The second opinion of the Ninth Circuit Court of Appeals rendered on November 10, 1966 on a petition for rehearing which upheld the right of the state of Washington to assume jurisdiction over Indians (368 F.2d 655).

JURISDICTION

Jurisdiction of this court is invoked by the Petitioner for a writ of certiorari under 28 U.S.C. § 1254(1) from the decision of the Ninth Circuit Court of Appeals dated November 10, 1966.

QUESTIONS PRESENTED

1. Whether the provisions of Public Law 280 required the state of Washington to amend its constitution prior to assuming any jurisdiction over Indian tribes and reservations within the state.

2. Whether Public Law 280 authorized the state of Washington to assume criminal and civil jurisdiction over Indian tribes and reservations in the manner prescribed by the legislative enactment of 1963 (chapter 37.12 RCW).

STATUTES INVOLVED

Public Law 280 (67 Stat. 488, 18 U.S.C. § 1162, 28 U.S.C. § 1360).

Revised Code of Washington (RCW) 37.12.010, 37.12.021.

STATEMENT OF THE CASE

In 1953, Congress enacted Public Law 280 (67 Stat. 488, 18 U.S.C. § 1162, 28 U.S.C. § 1360) which gave civil and criminal jurisdiction over Indian lands to the states of California, Minnesota, Nebraska, Oregon and Wisconsin. In addition to conferring jurisdiction over Indians to the five specific states, Sections 6 and 7 of the act authorized other states to assume jurisdiction either by an amendment of their state constitution or by enactment of legislation assuming jurisdiction.

In 1957, the state of Washington enacted chapter 37.12 RCW whereby the state agreed to assume civil and criminal jurisdiction over Indian tribes within the state upon the presentation of a resolution from the majority of any tribal council or other governing body of a tribe requesting the governor to issue a proclamation that the state would assume such jurisdiction.

Subsequent to that time, the Supreme Court of the state of Washington decided the case of *State v. Paul*, 53 Wn.2d 789, 337 P.2d 33 (1959) pages 13-20 (Appendix A). In that case, it was alleged that chapter 37.12 RCW was unconstitutional and invalid be-

cause the state had not amended Article XXVI of the constitution which was a part of the Enabling Act (25 Stat. 676, 677 (1889)) before assuming jurisdiction over Indians pursuant to Public Law 280. Article XXVI provides in part as follows:

> "That the people inhabiting this state do agree and declare that they forever disclaim all right and title * * * to all lands lying within said limits owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the congress of the United States * * * "

The Enabling Act whereby Washington was admitted to the Union also included the states of North Dakota, South Dakota and Montana. In the *Paul* case, *supra*, the Washington Supreme Court held that it was unnecessary to amend Article XXVI of the constitution in order for the state to assume civil and criminal jurisdiction over Indians, but held that such jurisdiction could be assumed pursuant to Public Law 280 by an enactment of the state legislature. Accordingly, it upheld the constitutionality of chapter 37.12 RCW as enacted in 1957.

In 1963, the legislature of the state of Washington amended the 1957 act and assumed jurisdiction over all Indians and Indian tribes within the state in certain specified areas, but still authorized the assumption of full civil and criminal jurisdiction over

any tribe pursuant to the request of the tribe as previously authorized by the 1957 act, RCW 37.12-.010 and 37.12.021, pages 21, 22 (Appendix B).

The Quinault Indian Reservation first came under state jurisdiction by virtue of a proclamation of the governor on May 5, 1958 at the request of the Quinault Business Committee. The validity of the proclamation was challenged by the Quinaults but was upheld by the Supreme Court of the state of Washington in the case of *State v. Bertrand*, 61 Wn.2d 333, 378 P.2d 427 (1963). Nevertheless, on January 12, 1965 the governor withdrew his 1958 proclamation, and accordingly, the Quinault Reservation is under state jurisdiction pursuant to the provisions of the 1963 act.

REASONS FOR GRANTING THE WRIT

1. The respondents agree with the appellants herein that an important issue of state-federal Indian relations is raised in the instant case which is of great importance to all of the Indian tribes in the state of Washington as well as those in other states. However, the question of whether the state of Washington was required to amend its constitution in order to assume jurisdiction pursuant to Public Law 280 over Indians within the state of Washington is a state question which has been decided by the Supreme Court of the state of Washington in *State v. Paul, supra.* This court has held in many cases that it is the duty of the federal courts to follow state court decisions on questions involving the construction and

application of state statutes and state constitutions, and they are bound by the decisions of the highest courts of the state in matters depending upon the construction of state statutes or constitutions. 28 U.S.C. § 1652; *Cohen v. Beneficial Industrial Loan Corporation*, 337 U.S. 541, 69 S.Ct. 121, 93 L.Ed. 1528 (1948); *Aero Mayflower Transit Co. v. Board of Railroad Commissioners*, 332 U.S. 495, 68 S.Ct. 167, 92 L.Ed. 99 (1947); *Louisiana v. Resweber*, 329 U.S. 459, 67 S.Ct. 374, 91 L.Ed. 422 (1946); *Erie R. Co. v. Tompkins*, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1938). See also *Anderson v. Gladden*, 188 F.Supp. 666, 676 (D.C. Ore. 1960) aff. 293 F.2d 463 (9th Cir. 1961).

2. The decision of the Ninth Circuit Court of Appeals held that the provisions of Public Law 280 authorized the state of Washington to assume jurisdiction over Indian tribes and reservations as was done by the 1963 amendment to chapter 37.12 RCW. Petitioners allege that the decision of the Ninth Circuit Court of Appeals is in error, inasmuch as it is in conflict with the decision of the Supreme Court of South Dakota in the case of *Re Julia Hankins*, 80 S.D. 435, 125 N.W.2d 89 (1964). In that case, the Supreme Court of South Dakota was concerned with the validity of legislation enacted pursuant to Public Law 280 wherein the state assumed jurisdiction over the operation of motor vehicles upon highways located in Indian country. The South Dakota court held that so-called "piecemeal" assumption was not authorized by Public Law 280.

Respondents do not agree with petitioner's argument that the Ninth Circuit Court of Appeals is bound by the decision of a state court interpreting a federal statute. The interpretation of Public Law 280 as enacted by Congress is a matter for the federal courts and the decision of the Supreme Court of South Dakota is of no effect insofar as the Ninth Circuit Court of Appeals is concerned, nor upon any federal court. In the decision of the Circuit Court of November 10, 1966 the court stated as follows with regard to the 1963 legislation enacted by the state of Washington:

> "The third claim which plaintiffs purport to state in their complaint is that chapter 36, Laws of 1963, amending chapter 240, Laws of 1957, is void because it represents only a partial assumption of state jurisdiction over Indian reservations, whereas Public Law 280 does not authorize partial assumption of jurisdiction.
>
> "The scope of chapter 36 is summarized in our earlier opinion, opposite note 2. *We do not read that act as constituting only a partial assumption of jurisdiction. The state therein indicates its willingness to extend criminal and civil jurisdiction over all Indians and Indian territory, reservations, country and lands within the state, it being provided, however, that as to some matters concerning some Indians, there must first be a tribal resolution and a gubernatorial proclamation.* In chapter 240, Laws of 1957, this Indian resolution and governor's proclamation procedure applied to all exertions of state jurisdiction. [Emphasis supplied]

"In our opinion, the indicated condition precedent to the exertion of state jurisdiction as to some matters concerning some Indians involves no violation of Public Law 280."

CONCLUSION

Respondents concur with petitioner that inasmuch as the question of assumption of jurisdiction by the various states pursuant to Sections 6 and 7 of Public Law 280 is of vital importance to Indian tribes as well as to state and county governments throughout the country, the petition for writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A

THE STATE OF WASHINGTON, *Plaintiff and Relator*, v. JANICE PAUL, *Defendant*,
THE SUPERIOR COURT FOR SNOHOMISH COUNTY, *Charles R. Denney, Judge*, *Respondent*.
No. 35005

[1] STATES—CONSTITUTIONAL LAW—ENABLING ACT—MODIFICATION—POWER OF LEGISLATURE. Const. Art. XXVI, providing that the enabling act of the state of Washington shall be irrevocable without the consent of the people of the state, may be complied with by the people of the state speaking through the Legislature, and does not require an amendment of the constitution by vote of the people.

[2] INDIANS—CRIMINAL PROSECUTIONS—JURISDICTION—STATE COURTS. Laws of 1957, chapter 240, establishing a procedure by which the state could assume civil and criminal jurisdiction over Indian tribes within the state, is not violative of Const. Art. XXVI, which adopts the Washington Enabling Act (25 Stat. 676) and provides that it "shall be irrevocable without the consent of the United States and the people of Washington," and that "Indian lands shall remain under the absolute jurisdiction and control of the Congress", since the Legislature in enacting Laws of 1957, chapter 240, spoke for the people and supplemented an act of Congress (67 Stat. 588) authorizing the states to assume jurisdiction of Indians; hence, a Superior Court had jurisdiction over a member of an Indian tribe and resident of a reservation charged with second-degree assault upon the person of another Indian allegedly committed on a reservation, where the tribe to which the defendant belonged had complied with the procedure provided in Laws of 1957, chapter 240, and the Governor had proclaimed state jurisdiction over the tribe.

Certiorari to review an order of the superior court for Snohomish county, No. 2093, Denney, J., entered December 10, 1958, dismissing a prosecution for second-degree assault. Reversed.

Arnold R. Zempel, R. C. Jefferson, The Attorney General, Mitchell Doumit and *E. P. Donnelly, Assistants*, for relator.

Newell Smith, for respondent.

Charles P. Moriarty, Richard F. Broz, Raymond C. Coulter, and *Leon Jourolmon, amici curiae.*

FINLEY, J.—Janice Paul, an Indian, is a member of the Skagit tribe and resides on the Tulalip Indian reservation in Snohomish county. She is subject by treaty to the jurisdiction of the Tulalip Indian Corporation.

By information, Janice Paul was charged with the crime of second degree assault. The acts which are alleged to have constituted the assault occurred on the Tulalip reservation, and the person alleged to have been assaulted is an Indian.

A motion for dismissal of the action was filed after the arraignment of Janice Paul. It urged that the superior court for Snohomish county had no jurisdiction of the person of the defendant or the subject matter of the action. In disposing of the matter, the trial judge ordered the cause dismissed, with prejudice, on the ground of lack of jurisdiction, holding chapter 240, Laws of 1957, p. 941, to be unconstitutional. This created an emergent situation respecting law enforcement, peace and order in certain localities adjacent to or embracing Indian reservations in the state of Washington. Consequently, this court granted the state's petition for certiorari.

The constitutionality of chapter 240, *supra*, should be considered in the light of several constitutional provisions and in relation to certain legislative enactments leading up to the passage of chapter 240, *supra*.

It was in 1889 that the Congress of the United States admitted the states of Washington, North Dakota, South Dakota and Montana into the Union; 25 Stat. 676. The enabling act provided, *inter alia*, for a constitutional convention in the state of Washington. It further provided:

> "* * * And said conventions shall provide, by ordinances irrevocable without the consent of the United States and the *people of said States*:
>
> "* * *
>
> "Second. That the people inhabiting said proposed States do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries hereof, and to all lands lying within said limits owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, *and said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States*; that the lands belonging to citizens of the United States residing without the said States shall never be taxed at a higher rate than the lands belonging to residents thereof; that no taxes shall be imposed by the States on lands or property therein belonging to or which may here-

after be purchased by the United States or reserved for its use. * * *" (Italics ours.)

In compliance with the enabling act, Art. XXVI of the Washington state constitution provided as follows:

"COMPACT WITH THE UNITED STATES

"The following ordinance shall be irrevocable without the consent of the United States and the *people of this state*:

"* * *

"Second. That the people inhabiting this state do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries of this state, and to all lands lying within said limits owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, *and said Indian lands shall remain under the absolute jurisdiction and control of the congress of the United States* and that the lands belonging to citizens of the United States residing without the limits of this state shall never be taxed at a higher rate than the lands belonging to residents thereof; and that no taxes shall be imposed by the state on lands or property therein, belonging to or which may be hereafter purchased by the United States or reserved for use: * * *" (Italics ours.)

In 1953, Congress enacted Public Law 280 (67 Stat. 588, 590), consenting to the assumption of jurisdiction over Indians by the states. The pertinent sections of Public Law 280, *supra*, provide:

"Sec. 6. Notwithstanding the provisions of any Enabling Act for the admission of a State, the consent of the United States is hereby given to the people of any State to amend, where necessary, their State constitution or existing statutes, as the case may be, to remove any legal impediment to the assumption of civil and criminal jurisdiction in accordance with the provisions of this Act: *Provided*, That the provisions of this Act shall not become effective with respect to such assumption of jurisdiction by any such State until the people thereof have appropriately amended their State constitution or statutes as the case may be.

"Sec. 7. The consent of the United States is hereby given to any other State not having jurisdiction with respect to criminal offenses or civil causes of action, or with respect to both, as provided for in this Act, to assume jurisdiction at such time and in such manner as the people of the State shall, by affirmative legislative action, obligate and bind the State to assumption thereof."

Supplementing Congressional enactment of Public Law 280, *supra*, our legislature enacted chapter 240, Laws of 1957, p. 941. The following portion of chapter 240 is significant:

"SECTION 1. The state of Washington hereby obligates and binds itself to assume, as hereinafter provided, criminal and civil jurisdiction over Indians and Indian territory, reservation, country, and lands within this state in accordance with the consent of the United States given by the act of August 15, 1953 (Public Law 280, 83rd Congress, 1st Session)."

Inter alia, chapter 240, *supra*, provides that the state of Washington shall not assume jurisdiction over an Indian tribe in this state until such tribe expresses a desire for its people to be subject to the jurisdiction of the state of Washington. The procedure is specified. A tribe may petition the governor of the state. The governor then may issue a proclamation to the effect that the state of Washington assumes jurisdiction over the petitioning tribe.

Subsequent to the enactment of chapter 240, *supra*, the Tulalip Indian Corporation petitioned the governor to place its tribe under the jurisdiction of the state of Washington. The governor proclaimed the assumption of jurisdiction shortly thereafter, as provided in chapter 240, *supra*.

Defendant asserts that chapter 240, *supra*, violates Art. XXVI of the Washington state constitution; consequently, that it is unconstitutional. The basic question which defendant's contention raises in the instant case is whether "the consent of the people" of this state (in terms of Art. XXVI, *supra*) may be effectuated or accomplished by action of the legislature; or whether it must be accomplished, if at all, through action by the people of the state of Washington in voting to amend the state constitution.

The same question was before the court in *Boeing Aircraft Co. v. Reconstruction Finance Corp.* (1946), 25 Wn. (2d) 652, 171 P. (2d) 838, 168 A. L. R. 539. Therein, the court was concerned with another portion of Art. XXVI, *supra*; namely, the

provision that, without the consent of the United States and the people of this state,

> "'* * * no taxes shall be imposed by the state on lands or property therein belonging to or which may be hereafter purchased by the United States or reserved for use: * * *'"

In the *Boeing* case, *supra*, the court clearly held that the legislature could effect or accomplish consent of the people of this state, within the meaning of Art. XXVI, *supra*. The reasoning of the court, in part, was that

> "The enabling act was approved February 22, 1889. Our constitution was framed August 22, 1889, and ratified by the people at an election held October 1, 1889. On November 11, 1889, President Harrison, in accordance with the provisions of the enabling act, proclaimed the admission of the state of Washington into the Union. At the times just mentioned, there was no method, aside from amending the constitution, of submitting a question to the people of this state. Neither the initiative nor the referendum was known or even thought of at that time. It is an inescapable conclusion that the framers of the constitution and the Congress of the United States intended that any agreement allowing Federal property to be taxed, would be arrived at by the passage of laws by the Congress of the United States and *the legislature of the state of Washington.* It is clearly apparent that the makers of our constitution had this in mind that *the people would speak through the mouth of the legislature in agreeing that Federal property might be taxed.*" (Italics ours.)

[1] We believe that this reasoning is still sound. It will be noted that the framers of our constitution, in enacting Art. XXVI, *supra*, adopted the identical words found in the enabling act. Apparently, this was done to conform with the requirements imposed by Congress for admission of Washington state into the Union. Congress did not require that this compact clause be irrevocable, absent a Washington state constitutional amendment. Rather, Congress insisted on bilateral action by the people of the United States (speaking through Congress) and the people of the state of Washington (speaking through the legislature).

[2] In the present case it is factually significant that Congress has consented to the assumption of jurisdiction over the members of Indian tribes by the states; *provided*, of course, that proper state action is taken consenting thereto. Our state legislature, by enacting chapter 240, *supra*, has spoken for the people of the state, supplementing the action by Congress. Pursuant to the act, the Tulalip Indian tribe petitioned the governor for placement under state jurisdiction. The governor has proclaimed this jurisdiction. It is our conclusion that the state of Washington now has jurisdiction over the Tulalip Indian tribe and, more specifically, over the defendant in this case. Accordingly, it follows that the judgment of the trial court should be reversed. It is so ordered.

MALLERY, DONWORTH, ROSELLINI, OTT, FOSTER, and HUNTER, JJ., concur.

WEAVER, C. J., and HILL, J. concur in the result.

May 4, 1959. Petition for rehearing denied.

APPENDIX B

37.12.010 **Assumption of criminal and civil jurisdiction by the state.** The state of Washington hereby obligates and binds itself to assume criminal and civil jurisdiction over Indians and Indian territory, reservations, country, and lands within this state in accordance with the consent of the United States given by the act of August 15, 1953 (Public Law 280, 83rd Congress, 1st Session), but such assumption of jurisdiction shall not apply to Indians when on their tribal lands or allotted lands within an established Indian reservation and held in trust by the United States or subject to a restriction against alienation imposed by the United States, unless the provisions of RCW 37.12.021 have been invoked, except for the following:

(1) Compulsory school attendance;

(2) Public assistance;

(3) Domestic relations;

(4) Mental illness;

(5) Juvenile delinquency;

(6) Adoption proceedings;

(7) Dependent children; and

(8) Operation of motor vehicles upon the public streets, alleys, roads and highways: *Provided further*, That Indian tribes that petitioned for, were granted and became subject to state jurisdiction pursuant to this chapter on or before March 13, 1963 shall remain subject to state civil and criminal jurisdiction as if chapter 36, Laws of 1963 had not been enacted.

37.12.021 ——Resolution of request—Proclamation by governor, 1963 act. Whenever the governor of this state shall receive from the majority of any tribe or the tribal council or other governing body, duly recognized by the Bureau of Indian Affairs, of any Indian tribe, community, band or group in this state a resolution expressing its desire that its people and lands be subject to the criminal or civil jurisdiction of the state of Washington to the full extent authorized by federal law, he shall issue within sixty days a proclamation to the effect that such jurisdiction shall apply to all Indians and all Indian territory, reservations, country, and lands of the Indian body involved to the same extent that this state exercises civil and criminal jurisdiction or both elsewhere within the state: *Provided*, That jurisdiction assumed pursuant to this section shall nevertheless be subject to the limitations set forth in RCW 37.12.060.

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In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 1040

QUINAULT TRIBE OF INDIANS, PETITIONER

v.

A. M. GALLAGHER, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

This memorandum is submitted in response to the Court's order of March 20, 1967, inviting the Solicitor General to file a brief expressing the views of the United States in the instant case. The question presented is whether the laws of the State of Washington have been extended to the reservation of the Quinault Tribe of Indians as a result of action taken by the State pursuant to P.L. 83-280, 67 Stat. 588 (referred to throughout this litigation as "Public Law 280").

STATEMENT

Public Law 280 was enacted in 1953 to accord States the opportunity to assume—with exceptions not here relevant—civil and criminal jurisdiction over

Indian reservations located within their borders. Five States—California, Minnesota, Nebraska, Oregon and Wisconsin—were, under the provisions of Public Law 280, expressly ceded such jurisdiction over almost all Indian reservations within those States.[1] With respect to the other States, Sections 6 and 7 of Public Law 280 provided as follows:

> SEC. 6. Notwithstanding the provisions of any Enabling Act for the admission of a State, the consent of the United States is hereby given to the people of any State to amend, where necessary, their State constitution or existing statutes, as the case may be, to remove any legal impediment to the assumption of civil and criminal jurisdiction in accordance with the provisions of this Act: *Provided*, That the provisions of this Act shall not become effective with respect to such assumption of jurisdiction by any such State until the people thereof have appropriately amended their State constitution or statutes as the case may be.
>
> SEC. 7. The consent of the United States is given to any other state not having jurisdiction with respect to criminal offenses or civil causes of action, or with respect to both, as provided for in this Act, to assume jurisdiction at such time and in such manner as the people of the State shall, by affirmative legislative action, obligate and bind the State to assumption thereof.

---

[1] Alaska was added to that list in 1958. 72 Stat. 545. Iowa, Kansas and New York had previously been granted varying degrees of jurisdiction. 62 Stat. 1161; 54 Stat. 249; 62 Stat. 827; 62 Stat. 1224; 64 Stat. 845.

The State of Washington's Enabling Act, 25 Stat. 676, 677 (which applies also to the Dakotas and Montana), contained a provision requiring it to include in its constitution a disclaimer of jurisdiction over Indian territory.[2] Pursuant to this requirement Article 26 of the Washington Constitution—which is titled "Compact with the United States"—reads:

> The following ordinance shall be irrevocable without the consent of the United States and the people of this state:—
>
> * * * the people inhabiting this state do agree and declare that they forever disclaim all right and title to * * * all lands lying [within the boundaries of this state] owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the congress of the United States * * *.

Seeking to exercise the authority conferred by Public Law 280, the State of Washington enacted a statute in 1957 authorizing the governor to extend State criminal and civil jurisdiction to a tribal reservation upon receipt of a formal request from the "tribal council or other governing body" of the tribe "expressing its desire" to be subject to such jurisdiction. Rev. Code Wash. Ann. § 37.12.020; Pet. 42. The "Business Committee" of the Quinault Tribe submitted a resolution to the governor in April 1958

[2] Eight States (including Arizona, New Mexico, Oklahoma and Utah) have similar provisions in their enabling acts and similar constitutional disclaimers.

assertedly expressing the tribe's desire to be subject to the State's civil and criminal jurisdiction. In May 1958, the governor issued a proclamation placing the Quinault Reservation under State jurisdiction. Certain members of the Quinault tribe thereupon challenged the proclamation on the ground that the petition to the governor was not authorized by the governing body of the tribe. That challenge was litigated in the State courts, where it was determined that the courts would not look behind the governor's decision to treat the petition as validly authorized. *State* v. *Bertrand,* 61 Wash. 2d 333, 378 P. 2d 427.

In 1963, the Washington legislature repealed the 1957 statute and enacted a new measure which extended the State's jurisdiction, with respect to eight enumerated subjects,[3] to all Indian lands held in fee within the State. That statute also empowered the governor, upon receipt of an appropriate petition from a tribe, to proclaim the State's civil and criminal jurisdiction with respect to other subjects, and it retained in effect all outstanding proclamations. Rev. Code Wash. Ann. § 37.12.010–37.120.070; Pet. 40–47. In 1965, after the present action was begun (and after the complaint had been dismissed by the district court), the governor issued a proclamation withdrawing the 1958 proclamation respecting the Quinault tribe on the ground—stated in the preamble thereto—

[3] The subjects were: (1) compulsory school attendance; (2) public assistance; (3) domestic relations; (4) mental illness; (5) juvenile delinquency; (6) adoption proceedings; (7) dependent children; and (8) operation of motor vehicles upon public streets, alleys, roads and highways.

"that it was not the will of the majority of the Quinaults to petition for State jurisdiction in 1958."[4]

The present action was instituted by petitioner in 1964 in the United States District Court for the Western District of Washington. Petitioner sought an injunction against the operation of State law and a declaration that the 1957 and 1963 statutes were invalid. The principal ground asserted was that the State of Washington had failed to comply with Section 6 of Public Law 280 because it had extended State jurisdiction by statute rather than by amending the State constitution. Petitioner also contended that the partial extension of jurisdiction accomplished by the 1963 statute was not permitted by Public Law 280. The district court dismissed the complaint (Pet. 34–35). The court of appeals affirmed, first because it concluded that jurisdictional prerequisites had not been satisfied (368 F. 2d 648; Pet. 18–27) and, subsequently, when a new jurisdictional statute (28 U.S.C. 1362) was called to its attention, on the ground that the action taken by the State of Washington complied with the requirements of Public Law 280 (368 F. 2d 654; Pet. 28–33).

DISCUSSION

The issues presented to the court below were, we believe, correctly decided. They are, however, important questions affecting the avenues available under Public Law 280 to States other than Washington which have substantial Indian populations and are

[4] We have reproduced the 1965 proclamation as an appendix to this memorandum (*infra*, p. 11.)

presently limited by similar disclaimers in their constitutions. See note 2, *supra*. Some of the States affected by the issues presented are in the Eighth and Tenth Circuits, and the decision below would, therefore, not be conclusive with respect to the validity of parallel statutes in those States. Uncertainty in this area is obviously most undesirable because it is likely to produce conflicts or gaps in the administration of civil and criminal laws. Consequently, we agree with the parties that review by this Court would be appropriate. We also note that, in light of the 1965 proclamation by the governor which revoked the 1958 assumption of State jurisdiction, there is an additional issue in the case on which we take a view contrary to that of both parties. As we explain more fully below, we believe that that issue should now be considered by the Court even though it was not contested below and is not, in a formal sense, part of the record.

1. The Supreme Court of Washington has squarely held that Article 26 of the State constitution authorizes the State legislature to assume jurisdiction over an Indian reservation by statute, and that it need not be done by constitutional amendment. *State* v. *Paul*, 53 Wash. 2d 789, 337 P. 2d 33, appeal dismissed, 361 U.S. 898. It is clear, therefore, that the 1957 and 1963 statutes were valid assumptions of jurisdiction *under State law*. Petitioner contends, however, that federal, and not State, law governs the validity of action taken by the State pursuant to Public Law 280. The federal statute does not, of course, speak expressly of

either State or federal law, and it may be true that Congress believed that ordinarily States would, by force of their own law, be required to overcome constitutional disclaimers by constitutional amendments. The plain purpose of Section 6, however, was "to remove any legal impediments to the assumption of * * * jurisdiction" (see S. Rep. No. 699, 83d Cong., 1st Sess., pp. 6–7; H. Rep. No. 848, 83d Cong., 1st Sess., pp. 6–8), and we believe that Congress intended thereby to leave to State law the procedure whereby impediments attributable to State law might be overcome. Washington's decision that a statute satisfies the requirement of its constitution that the cession of jurisdiction be revocable only with the consent of "the people of" the State is a reasonable one, and it was properly honored by the court below.

Although we believe the issue was correctly decided below, we agree that the question whether Public Law 280 establishes a *federal* standard is of sufficient importance to warrant its resolution by this Court. Consequently, we join in the request that certiorari be granted on this question.

2. The second question presented is whether there is any inhibition in Public Law 280 against a partial State assumption of jurisdiction. For the reasons stated below (pp. 9–10, *infra*), we do not believe the validity of the 1963 statute—which asserts State jurisdiction over certain subject-matter only—is necessarily involved in this litigation.

At all events, we think the question was correctly decided by the court below. We believe that Public

Law 280 intended to permit partial assertions of subject matter jurisdiction by States provided they are not so narrow or fragmentary as to create an impractical maze of regulation. See *In re Hankin's Petition*, 80 S.D. 435, 125 N.W. 2d 839; cf. *Seymour* v. *Superintendent*, 368 U.S. 351. This would occur if a State attempted to assume jurisdiction over only part of a discrete subject category such as welfare, education or crimes. See *In re Hankin's Petition, supra.* Washington's statute was not of that kind. See note 3, *infra*. Nevertheless, because the issue is important and its resolution will affect the validity of similar statutes in the States of Idaho and North Dakota, if certiorari is granted it would seem appropriate for the parties to argue this question as well.

Another aspect of the "partial jurisdiction" problem is properly here, in any event. That question is whether a State may provide for jurisdiction on a tribe-by-tribe basis, as Washington has done. Although Congress did not specifically provide for approval by the Indian tribes when it enacted Public Law 280, we do not believe that it intended thereby to prevent a State from conditioning its assertion of jurisdiction on the consent of the affected tribes. We have been advised that there are no substantial practical difficulties in the administration of such a scheme because ordinarily a reservation is occupied by only a single tribe or by several who act through a single council or governing body. Several States other than Washington have enacted provisions extending juris-

diction on a tribe-by-tribe basis,[5] and these have never been challenged.

3. Our view that the validity of the 1963 statute (assuming jurisdiction over Indian territory only with respect to enumerated subject matter) is not involved here is premised on our belief that the 1958 proclamation (which extended State jurisdiction fully over the Quinault Reservation) remains effective despite the recent attempt to revoke it by the governor's subsequent proclamation in 1965.

We believe that Public Law 280 did not contemplate retrocessions of jurisdiction.[6] Congress anticipated that those States which desired to assume jurisdiction over Indian reservations and could accomplish that result under State law would do so. It did not, we believe, accord the States an option to assume jurisdiction and divest it at will. Compare *United States* v. *Unzeuta,* 281 U.S. 138; *Rogers* v. *Squier,* 157 F. 2d 948 (C.A. 9), certiorari denied, 330 U.S. 840.

The validity of the governor's 1965 revocation was not put in issue by the parties and it was not passed

[5] States having legislation similar to Washington's are: Idaho (see Idaho Code 57-5101—67-5103), Montana (see Rev. Code Mont. 83-801—83-806), and North Dakota (see North Dak. Cent. Code Ann. 27-19-01—27-19-13). See also Nevada (Nev. Rev. Stat. 41-430). Florida has extended complete civil and criminal jurisdiction over all Indian country within the State. Fla. Stat. Ann. 285.16. We are aware of no other states which have asserted jurisdiction over Indians pursuant to Public Law 280.

[6] A number of bills have been introduced recently to amend Public Law 280 so as to provide for retrocession. See *e.g.*, S. 253, 89th Cong., 1st Sess.; S. 966, 89th Cong., 1st Sess., at 111 Cong. Rec. 1801-1802.

on by the court below. We believe that the issue should be resolved now, however. The proclamation itself is official action which this Court may judicially notice, and its validity is of substantial and immediate significance. For, as matters now stand, neither the State of Washington—which treats the revocation as valid—nor the United States—which deems it a nullity—is administering its criminal or civil law (with the exception of the eight subjects enumerated in the 1963 statute) on the Quinault reservation. If certiorari is granted, we believe that the parties should be instructed to brief and argue this question.

CONCLUSION

For the foregoing reasons, we submit that the petition for a writ of certiorari should be granted and that the parties should be instructed to argue, among the other issues in the case, the validity of the governor's 1965 revocation of his proclamation of 1958.

Respectfully submitted.

THURGOOD MARSHALL,
Solictor General.
FRED M. VINSON, JR.,
Assistant Attorney General.
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APRIL 1967.

APPENDIX

STATE OF WASHINGTON,
EXECUTIVE DEPARTMENT,
Olympia.

ALBERT D. ROSELLINI
Governor

A Proclamation by the Governor:

WHEREAS, on the 15th day of May, 1958, a Proclamation was issued by the Governor of the State of Washington proclaiming "The criminal and civil jurisdiction of the State of Washington shall apply to the Quinault Indian people, their reservation, territory, lands and country, and all persons being and residing therein" and,

WHEREAS, this Proclamation was issued under the authority vested in the Governor by virtue of Chapter 240, the Laws of 1957, and;

WHEREAS, under the provisions of Chapter 36, Laws of 1963, the State of Washington assumed civil jurisdiction over certain matters and;

WHEREAS, there has been continued litigation concerning the question of State jurisdiction over the Quinault lands and;

WHEREAS, I verily believe that it was not the will of the majority of the Quinaults to petition for State jurisdiction in 1958:

NOW, THEREFORE, I, Albert D. Rosellini, Governor of the State of Washington, do hereby proclaim that the Governor's Proclamation of the 15th day of May,

nineteen hundred and fifty-eight, proclaiming State jurisdiction over the Quinaults is hereby revoked and proclaimed null and void.

I urge that the Quinaults conduct a proper election under proper supervision requesting State jurisdiction. It is further proclaimed that this action shall have no effect on the civil jurisdiction under the provisions of RCW 37.12.010.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the State of Washington to be affixed at Olympia this twelfth day of January, A.D., nineteen hundred and sixty-five.

/s/ ALBERT D. ROSELLINI,
Governor of Washington.

By the Governor:

/s/ VICTOR A. MEYERS,
Secretary of State.

U.S. GOVERNMENT PRINTING OFFICE: 1967

